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Via Electronic Filing

Ex Parte Communication

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

AT&T Services, Inc. (“AT&T”) files this letter to update the record in light of developments in the Broadband Deployment Advisory Committee and recent *ex parte* filings. In this docket, AT&T has consistently supported one-touch make-ready (“OTMR”) for simple (a.k.a. routine) transfers to streamline the pole attachment process and suggested that existing attachers perform complex transfers in order to avoid or reduce service outages for them and their customers.¹

AT&T is not alone in expressing these concerns. The Broadband Deployment Advisory Committee (“BDAC”) similarly recognized the significance of service outages arising from complex make-ready work and voted overwhelmingly that “[f]or complex attachments in the communications space, [OTMR] does not apply.”² Instead, existing attachers would be given the first opportunity to perform complex transfers within an appropriate timeline.³ AT&T supports this balanced approach to OTMR, though it may differ with other parts of the recommendation. Google also “supports providing existing attachers with a reasonable amount of time to self-perform complex make-ready.”⁴ Verizon argues for application of OTMR to complex transfers

¹ Comments of AT&T Services, Inc., WC Docket No. 17-84, at 14-16 (filed June 15, 2017) (“AT&T Comments”); Reply Comments of AT&T Services, Inc., WC Docket No. 17-84, at 7-8 (filed July 17, 2017).

² Report of the Competitive Access to Broadband Infrastructure Working Group, presented to the Broadband Deployment Advisory Committee of the Federal Communications Commission, Washington, DC, at 23 (Jan. 23-24, 2018) (the “BDAC Recommendation”). A BDAC approved version of the Report is not available on the BDAC web page.

³ *Id.* at 23.

⁴ See Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 4 (filed Feb. 1, 2018) (“Google *Ex Parte* Letter”). Given Google’s agreement with AT&T on this issue, its continued assertion that complex make-ready should not be excluded from OTMR creates confusion. *Id.* (“Complex make-ready, furthermore, should not be excluded from OTMR.”) Whether called OTMR or self-help, there appears to be agreement that a new attacher should be able to

with, at most, a longer notice period before the work begins.⁵ Though possibly not contemplated by Verizon, a reasonably long notice period would give existing attachers the opportunity to consider and offer alternative solutions that avoid the need for a cable splice or other complex transfer—thereby accelerating the new attacher’s access to the pole—or would give existing attachers the opportunity to perform their complex transfers before OTMR begins on all remaining facilities. AT&T encourages the Commission to follow AT&T’s proposal and the BDAC recommendation by limiting OTMR to simple transfers and allowing existing attachers a reasonable period of time to perform their own complex transfers prior to allowing self-help.

The amount of time that is “reasonable” for an existing attacher to perform complex make-ready work remains in debate. AT&T seeks 60 days, as in current regulations, to allow sufficient time for existing attachers to move circuits or take other action to reduce or avoid service interruptions for their customers and to give existing attachers with expansive operating areas the flexibility to manage their workforces to take these actions, an important consideration when planning for workloads that can ebb and flow. A time period to perform work is “reasonable” only if it captures a broad range of expected outcomes. Google, which owns relatively few poles and existing attachments and hence risks disrupting communications for few of its own customers, predictably seeks a 30-day period.⁶ Google also speculates that ILECs can delay all make-ready because their attachments are the lowest on the pole and must be moved first.⁷ In fact, the transfer sequence depends on many factors that differ by pole, such as the location of the extra space (above or below), where the existing cables are located, where the new attacher’s facilities will be located, whether a new pole is required, and how a new pole would be deployed. Verizon seeks a “slightly longer notice period” only and argues that outage impacts can be minimized by coordination between the existing attacher, new attacher, and OTMR contractor.

These proposals disregard the needs of existing attacher customers, some of which may be resellers with their own end users. Those customers must also prepare for a service interruption after receiving notice from their service provider—the existing attacher. Although coordination can enable joint planning and scheduling of complex make-ready work, neither coordination alone nor a 30-day period are sufficient for all affected parties to provide customer notice and plan contingencies, where necessary, for the anticipated service interruptions. The BDAC recommends a presumptive 30-day period for existing attachers to perform complex make-ready work, with the opportunity to extend the time period up to 60 days due to safety or service interruption.⁸ As all complex work involves a service interruption, the Commission can make the process more predictable for all attachers *and customers* by adopting this 60-day period in which the existing attacher can move its facilities as a bright line rule. When an existing attacher

perform complex transfers of facilities of all existing attachers that have failed to move within a reasonable period of time after notice.

⁵ See Letter from Katharine R. Sanders, Managing Associate Counsel-Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 4 (filed March 8, 2018) (“Verizon *Ex Parte* Letter”).

⁶ Google *Ex Parte* Letter at 6 (“To strike the right balance, the Commission should give existing attachers 30 days to perform complex make-ready themselves.”)

⁷ Google *Ex Parte* Letter at 2-3; Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (filed March 14, 2018).

⁸ BDAC Recommendation at 14.

fails to move its facilities within this 60-day period, the new attacher can perform make-ready work using an approved contractor, even if the work would have been covered by an existing attacher's collective bargaining agreement ("CBA"),⁹ as allowed by current Commission regulations. However, in other situations, new OTMR regulations should not trump the CBAs that existing attachers have negotiated in good faith with their union workers. Allowing skilled, experienced union workers to perform make-ready work covered by their CBAs also avoids the concerns (and delays that can occur) due to periodically changing pole owner approved contractors (e.g., lists, qualifications, objections, etc.).

AT&T also notes that the BDAC defines complex make-ready as "[t]ransfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments" and recommends that this definition encompass "any and all wireless activities."¹⁰ This objective definition is consistent with AT&T's position that "a 'complex' make-ready transfer is one that 'reasonably would be expected to cause a customer outage' including where cable splicing is needed."¹¹ As Google accurately observes, an objective definition reduces the chance of disagreement among pole owners, new attachers, and existing attachers.¹² Moreover, allowing all parties the opportunity to participate in an on-site field meeting to evaluate the scope of the proposed work and to raise concerns would further reduce the chance of disagreement on this issue.

AT&T also continues to believe that new attachers should indemnify existing attachers and pole owners for damages or outages that occur as a result of their OTMR work.¹³ Any and all limitations of liability in tariffs or contracts would flow to the new attacher and its contractor. Some argue that a broad indemnification obligation would incent existing attachers to not invoke those limitations of liability.¹⁴ But, this issue exists with all indemnification obligations and is easily resolved by requiring the party seeking indemnification to pursue its defenses with due diligence. More importantly, a broad indemnification will incent new attachers and their contractors to perform quality make-ready work and make them accountable when they fail to do

⁹ Contrary to Google's assertion, this is not a point of contention. See, e.g., Google *Ex Parte* Letter at 4 ("[I]f new attachers were required to honor AT&T's CBA, not only would they be unable to use union contractors for OTMR, but they would also be unable to exercise their self-help remedy *under the current rules*.").

¹⁰ BDAC Recommendation at 13.

¹¹ AT&T Comments at 15.

¹² Google *Ex Parte* Letter at 3-4.

¹³ See AT&T Comments at 18; Joint Letter from Frank S. Simone, Vice President-Federal Regulatory, AT&T, and Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 1 (filed Jan. 16, 2018) (A balanced, sensible OTMR approach, would "require new attachers to indemnify pole owners and existing attachers from liabilities associated with OTMR work.").

¹⁴ Verizon *Ex Parte* Letter at 6; Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 2 (filed Nov. 30, 2018).

so.¹⁵ AT&T is not alone in expressing concerns about the quality of the OTMR work.¹⁶ Some commenters have provided evidence of damage caused by improper placement of facilities by new attachers.¹⁷ These examples concern overlashing, but similar incidents occur during the make-ready process.

Pursuant to Section 1.1206 of the Commission's rules, an electronic copy of this letter is being filed for inclusion in this docket.

Sincerely,

/s/ Ola Oyefusi

¹⁵ See Letter from Steven F. Morris, VP & Assoc. General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-84, at 1 (filed March 5, 2018) ("NCTA *Ex Parte* Letter") ("We noted the record evidence of damages and disruption that result from third parties performing work on an existing attacher's network, and the need for meaningful indemnification to provide the appropriate incentives for new attachers and their contractors to perform high-quality work and to meet their responsibility to bear the cost of any damages."). AT&T also observes that the Timeline Comparison in NCTA's submission incorrectly describes AT&T's proposal as allowing 14-day and 15-day "Acceptance" and "Extended Time" periods, respectively. *Id.* at 1-3. In fact, AT&T's proposal would reduce the pole attachment process by up to 29 days by removing these time periods. See Comments of AT&T Services, Inc., WC Docket No. 17-84, at 9, 13 (filed June 15, 2017).

¹⁶ Joint Comments of Alliant Energy Corp., WEC Energy Group, Inc., and XCEL Energy Services Inc., WC Docket No. 17-84, at 26-27 (filed June 15, 2017); Comments of The Coalition of Concerned Utilities, WC Docket No. 17-84, at 21 (filed June 15, 2017); Comments of the Utilities Technology Council, WC Docket No. 17-84, at 14-15 (filed June 15, 2017).

¹⁷ See Comments of The Utility Coalition on Overlashing, WC Docket No. 17-84, at 11-13 (filed Jan. 17, 2018); Reply Comments of AT&T Services, Inc., WC Docket No. 17-84, at 3 (filed Feb. 16, 2018).

AT&T